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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/841,667	04/24/2001	Viveka Linde	ALBIHN W 3.0-406	6227
21003	7590	10/12/2005	EXAMINER	
BAKER & BOTTS 30 ROCKEFELLER PLAZA NEW YORK, NY 10112			VAN DOREN, BETH	
			ART UNIT	PAPER NUMBER
			3623	

DATE MAILED: 10/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/841,667

Applicant(s)

LINDE ET AL.

Examiner

Beth Van Doren

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The following is a non-final office action in response to communications received 08/01/2005. Claim 20 has been cancelled. Claim 19 has been amended. Claims 1-19 are pending in this application.

#### ***Response to Amendment***

2. Applicant's cancellation of claim 20 is sufficient to overcome the 35 USC § 101 rejections set forth in the previous office action.

#### ***Response to Arguments***

3. Applicant's arguments with respect to the 35 USC § 102 (b) rejections have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new grounds of rejection is made in view of Medical Radar ("Guide to Success") and Von Gonten (U.S. 6,708,156).

4. Applicant's argument with respect to the 35 USC § 103 rejections based on Medical Radar ("Guide to Success") and Von Gonten (U.S. 6,708,156) have been fully considered, but they are not persuasive. In the remarks, Applicant argues that there is no motivation to combine these references.

In response to this argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

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In this case, both Von Gonten and Medical Radar disclose analyzing market penetration of a product in order to predict future performance of a product. See column 2, lines 50-55, of Von Gonten and pages 11-12 of Medical Radar which disclose advantages of forecasting product performance.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Medical Radar ("Guide to Success") and Von Gonten (U.S. 6,708,156).

6. As per claim 1, Medical Radar teaches a method for computerized processing and presenting market and marketing information regarding at least one first product, comprising:

storing collected data related to at least one key success factor associated with at least the market performance which is related to said first product (See page 1, section 1, page 2, pages 5-6, page 11, page 12, page 17, page 20, which discuss collecting data related to the success of a first product);

forecasting the future sales of said first product based on said collected data related to said at least one key success factor (See page 1, section 1, page 2, page 4, page 16, section 1, page 20, wherein the system is used to forecast the future sales of the product based on the current collected data); and

transmitting said information to at least one external user (See page 1, section 1, page 2, sections 1 and 3, page 11, page 15, and page 20, which discuss the consulting services and the providing of a report and other data to user external of the consultants).

However, Medical Radar does not expressly disclose that this collected data is stored in a database or that the forecasting is performed using a central computing unit.

Von Gonten discloses collected data on the market is stored in a database and performing forecasting using a central computing unit See column 8, lines 20-50, column 9, lines 1-30, column 10, lines 8-25 and 40-55, and column 11, line 60-column 12, line 5 and lines 20-35, wherein a database and a computing unit are all utilized is used in the system).

Both Von Gonten and Medical Radar disclose analyzing market penetration of a product. Specifically, Medical Radar discloses collecting data concerning key success factors associated with market performance, forecasting future sales, and transmitting reports and information to customers and a system to perform these steps (see page 1). Von Gonten also discloses analyzing market sales data to predict future performance of a product. Therefore, it would have been obvious to utilize the computer architecture and system in Medical Radar in order to increase the efficiency of collecting, analyzing, and disseminating data to customers of the system.

7. As per claim 2, Medical Radar discloses wherein the key success factor associated with the market performance is constituted by information related to at least one of the following measures: a measure of the number of new customers purchasing said first product (See page 2, sections 1-2, page 16, section 1, page 17, pages 19-20, which discuss market share in terms of New, Switch, Supplementary, and Repeat markets)

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8. As per claim 3, Medical Radar teaches collecting data related an additional success factor corresponding to measure of a proportion customers adopting said first product during predetermined adoption process (See page 4, page 6, page 7, section 3, page 16, section 1, page 17, pages 19-21, wherein data is collected related to a customer's perception of a launch process. The system has predetermined models dealing with the launching process).
9. As per claim 4, Medical Radar teaches collecting data related an additional key success factor corresponding to a measure of a proportion of customers recalling personal promotion during a particular time period and related to said first product (See page 2, section 2, page 6, page 7, section 3, page 9, section 1, pages 19-20, which discuss reactions to promotions).
10. As per claim 5, Medical Radar teaches collecting data related an additional key success factor corresponding to the marketing productivity related to said first product (See page 2, pages 6-7, page 11, pages 18-20, which discusses the productivity of marketing on the products market placement).
11. As per claim 6, Medical Radar discloses wherein said marketing productivity corresponds to measure the impact of detailing related to said first product (See page 2, section 3, page 9, section 1, page 18, and page 20, which discuss measuring the impact of detailing).
10. As per claim 7, Medical Radar discloses collecting data related an additional key success factor corresponding to the rationales for selecting said first product (See page 2, page 5-6, page 9, page 17, and page 20, which discuss why a customer chooses the first product).
12. Claims 9, 10, and 12-18, recite equivalent limitations to claims 1, 2, and 1-7, respectively, and are therefore rejected using the same art and rationale set forth above.

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13. As per claims 8, 11, and 19, Medical Radar discloses that information is transmitted to said user and the Medical Radar has the ability to receive and send email (See page 1, page 2, pages 9-10, page 13, page 16, section 1, page 20, which discloses information being transmitted to a user via a report and also data collection, models, and a collection and presentation system). However, Medical Radar does not specifically disclose a database, a central computing unit, or the information being transmitted via the Internet or the system connected to the Internet.

Von Gonten discloses a system that projects the market penetration of a product by collecting data over the Internet, storing the data and performing analysis on the data, and allowing the data to be reported and retrieved using the Internet (See column 8, lines 20-50, column 9, lines 1-30, column 10, lines 8-25 and 40-55, wherein the internet, a database, and a computing unit are all utilized is used in the system).

Both Von Gonten and Medical Radar disclose analyzing market penetration of a product. Specifically, Medical Radar discloses transmitting reports and information to customers of the system. See page 10, where an email address is requested. Therefore, it would have been obvious to transmit and connect the system of Medical Radar using the Internet in order to increase the efficiency of disseminating data to customers of the system.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (571) 272-6737. The examiner can normally be reached on M-F, 8:30-5:00.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*bvd*  
bvd

October 3, 2005

  
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